

Notes

The Fair Housing Amendments Act of 1988: A Promising First Step Toward the Elimination of Familial Homelessness?

I. INTRODUCTION

The increasing number of horror stories concerning families who are forced to live in their cars, in tents, or on the streets because of inadequate housing¹ has helped to focus the attention of the popular media² and the legal community³ on the problem of homelessness among American families. Yet, despite widespread recognition and analysis of the effect of affordability, maximum occupancy restrictions, exclusionary zoning practices, racial prejudice, and private discrimination on the homelessness problem,⁴ only minimal progress was made toward realistically improving the plight of America's homeless families during the 1980s. By 1988, the American family had, in fact, become the largest and fastest growing segment of the homeless population, accounting for nearly half of all the homeless in some cities.⁵

One of the primary causes of the continuing homelessness problem among American families has been the inability of lawmakers to eliminate private discrimination against families with children in rental housing.⁶ For example, only fourteen states had statutorily prohibited such discrimination by 1988.⁷ Yet, even in these jurisdictions, numerous exemptions, loopholes, and weak enforcement provisions prevented most of the antidiscrimination provisions from having any significant effect.⁸ In 1988, Congress finally launched an attack against this contributory cause of familial homelessness by passing the Fair Housing Amendments Act of 1988⁹ (the "Act"). Through certain provisions of this new law, landlords are now prohibited on

1. See *infra* notes 53–56 and accompanying text.

2. See, e.g., *Landlords' "No-Children" Policies Frustrate Parents Seeking Housing*, Wall St. J., Oct. 16, 1985, § 2, at 35, col. 4 [hereinafter *Policies Frustrate*].

3. See, e.g., Marcin, *Homelessness: A Commentary and a Bibliography*, 4 J. CONTEMP. HEALTH L. & POL'Y 203 (1988); McKittrick, *The Homeless: Judicial Intervention on Behalf of a Politically Powerless Group*, 16 FORDHAM URB. L.J. 389 (1988); Swanstrom, *No Room at the Inn: Housing Policy and the Homeless*, 35 WASH. U.J. URB. & CONTEMP. L. 81 (1989); Note, *Why Johnny Can't Rent—An Examination of Laws Prohibiting Discrimination Against Families in Rental Housing*, 94 HARV. L. REV. 1829 (1981) [hereinafter *Why Johnny Can't Rent*]; Note, *Finding a Right to Shelter For Homeless Families*, 22 SUFFOLK U.L. REV. 719 (1988).

4. See, e.g., *Why Johnny Can't Rent*, *supra* note 3, at 1832 (author stresses fact that rents are increasing faster than most rental households' incomes); Travalio, *Suffer the Little Children—But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing*, 40 OHIO ST. L.J. 295 (1979) (author discusses age-related exclusionary zoning practices); Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1057–58, 1067, 1109–10 (1989) (author discusses effect of racial prejudice on homelessness); see generally Annotation, *Refusal to Rent Residential Premises to Persons With Children as Unlawful Discrimination*, 30 A.L.R. 4th 1187 (1987) (reviews cases considering the effect of discrimination against families with children in rental housing).

5. See *infra* notes 53–57 and accompanying text.

6. See *infra* notes 71–74 and accompanying text.

7. See *infra* note 59 and accompanying text.

8. See *infra* notes 61–70 and accompanying text.

9. Pub. L. No. 100-430, 102 Stat. 1619 (1988) (amending 42 U.S.C. §§ 3601–19 (1982)).

a national level from discriminating against prospective tenants because of their familial status.¹⁰

The purpose of this Note is to evaluate the impact of the new antidiscrimination provisions of the Fair Housing Amendments Act of 1988 on our ability to at least eliminate private familial discrimination in rental housing as a contributory cause of familial homelessness. This Note begins in Part II by reviewing the causes, scope, and effect of familial discrimination in rental housing. Part III considers the hopelessly inadequate attempts to eliminate such discrimination at the state and local levels. Part IV examines the ways in which the new Act improves on current and future state and local fair housing laws.¹¹ This Note concludes in Part V by finding that, although the Act will most likely reduce the importance of familial discrimination in the rental market as a factor contributing toward familial homelessness, even the *total* elimination of this private discrimination factor probably will have little real impact on the overall level of homelessness among America's families.

10. The Act's antidiscrimination provisions are the product of a fairly recent and far from unanimous Congressional desire to prohibit discrimination against families with children in rental housing. During the 92nd and 94th Congresses, a series of oversight hearings on equal opportunity in housing were held (e.g., *Equal Opportunity in Housing: Hearings Before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary of the House of Representatives*, 94th Cong., 2d Sess. (1976); *Federal Government's Role in the Achievement of Equal Opportunity in Housing: Hearings Before the Civil Rights Oversight Subcomm. of the House Comm. on the Judiciary*, 92d Cong., 1st & 2d Sess. (1971-72)) in response to widespread dissatisfaction with the coverage and enforcement provisions of the Fair Housing Act of 1968 (42 U.S.C. §§ 3601-19 (1982)). See H.R. REP. NO. 711, 100th Cong., 2d Sess., at 13-15 (1988). During the 95th and 96th Congresses, several bills were introduced which extended the protection of the 1968 Act to handicapped individuals and provided for new administrative enforcement provisions. See *id.* at 14. One version of these bills passed the House in 1980 but later failed in the Senate. See 134 CONG. REC. E3384 (daily ed. Oct. 11, 1988) (statement by Representative Edwards which includes a newspaper article reviewing the legislative history of previous fair housing bills).

In 1987, during the 100th Congress, Representatives Fish of New York and Edwards of California introduced House Report 1158 which included basically the same handicap and enforcement provisions of the previous bills and, for the first time, included provisions amending the 1968 Act by prohibiting discrimination in rental housing based on familial status. See H.R. REP. NO. 711, 100th Cong., 2d Sess., at 14 (1988). During consideration of the bill by the House Committee on the Judiciary, an amendment to eliminate completely the provisions regarding familial status was only narrowly defeated by a vote of 19 to 15. *Id.* at 85 (additional views of Representatives Shaw, Sensenbrenner, Gekas, Dannemeyer, Coble, and Slaughter). On June 29, 1988, the House passed H.R. 1158. See 134 CONG. REC. H4931 (daily ed. June 29, 1988). After only several minor revisions, the Senate passed the current version of H.R. 1158—the Fair Housing Amendments Act of 1988—on August 2, 1988. See 134 CONG. REC. S10562 (daily ed. Aug. 2, 1988). Following House concurrence in the Senate's amendments to the bill on August 8, 1988 (see 134 CONG. REC. H6501 (daily ed. Aug. 8, 1988)), President Reagan signed the bill into law on September 13, 1988. See 134 CONG. REC. D1413 (daily ed. Nov. 10, 1988).

11. For recent analyses of the general effect of the Fair Housing Amendments Act of 1988, see generally Allen, *Housing Bias Law Adds Handicapped, Families*, 123 N.J. L.J. 10 (1989); Anderson, *The 1988 Fair Housing Act Amendments*, 35 PRAC. LAW. 79 (June 1989); Caruso & Jones, *Fair Housing in the 1990's: An Overview of Recent Developments and Prognosis of Their Impact*, 22 J. MARSHALL L. REV. 421 (1989); Kushner, *supra* note 4; Massey, *Tough New Fair Housing Law Becomes Effective*, 23 ARK. LAW. 52 (1989); Morales, *Creating New Housing Opportunities for Families with Children: The Fair Housing Amendments Act of 1988*, 22 CLEARINGHOUSE REV. 744 (1988); Ruegger, *How the New Fair Housing Law Amendments Affect Your Clients*, 5 PRAC. REAL EST. LAW. 13 (July 1989); Schorr, *The Federal Fair Housing Amendments Act of 1988*, 63 FLA. B.J. 11 (Oct. 1989); Seng, *Discrimination Against Families with Children and Handicapped Persons Under the 1988 Amendments to the Fair Housing Act*, 22 J. MARSHALL L. REV. 541 (1989); Recent Developments, *Fair Housing Amendments Act of 1988*, 24 HARV. C.R.-C.L. L. REV. 249 (1989); Comment, *The Fair Housing Amendments Act of 1988: A Critical Analysis of "Familial Status"*, 54 MO. L. REV. 393 (1989); Comment, *Statutory Analysis of the Familial Status Provision of the Fair Housing Amendments Act of 1988—or, Why Do I Have to Live with These Curtain-Climbing Rug Rats?*, 17 N. KY. L. REV. 215 (1989); Lavelle, *Stiffer Housing Law Gets Results*, Nat'l L.J., Oct. 2, 1989, at 3, col. 1; Finder, *Blacks Remain Shut Out of Housing in White Areas*, N.Y. Times, Mar. 13, 1989, at B1, col. 2; *Age Limits: New Law Troubles Condos*, N.Y. Times, Jan. 15, 1989, § 10, at 7, col. 1.

II. CAUSES, SCOPE, AND EFFECT OF DISCRIMINATION AGAINST FAMILIES WITH CHILDREN IN AMERICAN RENTAL HOUSING

A. *Causes of the Discrimination Problem*

Although approximately 40 percent of all American households include children under age eighteen,¹² households with children represent only one-third of the national rental market.¹³ Of those households within the rental market containing children under age eighteen, approximately 42 percent contain only one child, and approximately 38 percent contain only two children.¹⁴ At first glance, these figures may seem to reflect common perceptions that most American families, particularly those with more than one child, simply prefer private home ownership to family life in a rental unit. Yet, closer examination of the situation reveals that under-representation of families with children in the national rental market is far from being solely a product of the free interaction of individual familial preferences and unrestrained market forces.

Many families are simply locked out of otherwise adequate rental housing by discriminatory rental practices aimed at restricting or excluding children. Landlords have adopted a wide variety of discriminatory policies which effectively exclude children from their properties. The most common policies include the following: Excluding children from "adult-only," "elderly," or "swinging-singles" developments; restricting occupancy of rental units to adults with children under a specified age limit; restricting the number of children per rental unit; restricting the ability of children of the opposite sex to share a bedroom in the rental unit; and imposing impractical rules and regulations governing the activities of children residing in the rental unit.¹⁵

Landlords who discriminate against families with children defend their actions on a number of grounds. A 1980 study by the Department of Housing and Urban Development (HUD) revealed that landlords routinely adopt discriminatory policies towards families with children in response to problems arising from, among other things, high maintenance costs associated with use of the property by children, unsupervised children, "wild teenage parties," generally noisy and boisterous children, higher insurance costs associated with use of the property by children, too much clutter produced by children in common areas, and neighbors' complaints about children.¹⁶ Landlords have also expressed concern over the increased likelihood of

12. 134 CONG. REC. H4608 (daily ed. June 22, 1988) (statistic quoted by Representative Edwards).

13. J. GREENE & G. BLAKE, A STUDY OF HOW RESTRICTIVE RENTAL PRACTICES AFFECT FAMILIES WITH CHILDREN 4 (1980) (prepared for the Office of Policy Development and Research, U.S. Department of Housing and Urban Development).

14. R. MARANS, M. COLTEN, R. GROVES & B. THOMAS, A REPORT ON MEASURING RESTRICTIVE RENTAL PRACTICES AFFECTING FAMILIES WITH CHILDREN: A NATIONAL SURVEY 9 (1980) (prepared for the Office of Policy Development and Research, U.S. Department of Housing and Urban Development) [hereinafter R. MARANS & M. COLTEN].

15. *Id.* at 21.

16. *Id.* at 64-65; see also *New Law Limits "No-Children" Housing: But Critics Say It's Too Vague on Exemptions*, Wall St. J., Feb. 13, 1989, at B2, col. 3 [hereinafter "*No-Children" Housing*] (quotes Florida condominium official as stating, "Vandalism, graffiti, loud music, public displays of sexual foreplay . . . I could give you 25 reasons why we don't want children.").

tort suits generated by the activities of children on the property.¹⁷ Yet, probably the most influential factor guiding a landlord's decision to discriminate is the prospect of increased financial rewards from tenants seeking to live apart from children.¹⁸

HUD's study found that approximately one-quarter of rental households without children express a clear preference to live in rental communities where children are not present.¹⁹ Many of these households prefer to avoid the noisy and disturbing nature of children in general, to avoid the consequences of the destructive nature of children, to avoid dealing with the generally bad behavior of unsupervised children, or to avoid dealing with the clutter created by children in hallways and common areas.²⁰ Some people prefer facilities and services which only adults can use. Others simply dislike children in general.²¹ Many people, therefore, are often willing to pay extra for the privilege of living apart from children. As a result, landlords are usually able to command higher rents from properties where the presence of children is restricted or forbidden.²²

B. *Scope of the Discrimination Problem*

Discrimination against families with children in rental housing has been perceived as a growing national problem. In the most recent study of this pervasive form of discrimination, HUD found that in 1974 approximately 17 percent of all rental units in the United States excluded children.²³ This same study revealed that, by 1980, nearly 25 percent of all rental units in the United States excluded children and an additional 50 percent were subject to restrictive policies which effectively limited the ability of families with children to live in a particular rental unit.²⁴ HUD's study, therefore, indicated that approximately 75 percent of all rental housing in the United States imposed some sort of discriminatory restriction on occupancy by families with children.²⁵

Although discrimination against families with children in rental housing is a prevalent problem throughout the United States, the severity of the problem varies by geographic region and metropolitan area. The discrimination problem is most severe in the West where nearly 80 percent of all rental units exclude or restrict occupancy by children.²⁶ In contrast, the country's "lowest" incidence of such discrimination is found in the Northeast where approximately 70 percent of all rental

17. See Travaglio, *supra* note 4, at 337; "No-Children" Housing, *supra* note 16 ("Many developments also are concerned over their exposure to liability. 'These places weren't designed with kids in mind. There are no fences around rock cliffs or swimming pools.'").

18. See *Why Johnny Can't Rent*, *supra* note 3, at 1835.

19. R. MARANS & M. COLTEN, *supra* note 14, at 55.

20. *Id.* at 58; see also "No-Children" Housing, *supra* note 16 (quoting retiree as stating, "We feel we're entitled to our peace and quiet.").

21. R. MARANS & M. COLTEN, *supra* note 14, at 58.

22. See *Why Johnny Can't Rent*, *supra* note 3, at 1834, 1836 (reference made to 1980 study of Atlanta, Georgia corroborating findings of higher rents in rental properties restricting or excluding children).

23. R. MARANS & M. COLTEN, *supra* note 14, at 46.

24. *Id.* at 24.

25. *Id.*

26. *Id.* at 99 (37.4% of rental units in the West exclude children and an additional 40.4% impose restrictions on occupancy by children).

units exclude or restrict occupancy by children.²⁷ Widely varying degrees of such discrimination have also been well documented in studies of individual metropolitan regions including Los Angeles, California;²⁸ San Jose, California;²⁹ San Diego, California;³⁰ Fresno, California;³¹ Dallas, Texas;³² Irving, Texas;³³ Columbus, Ohio;³⁴ Des Moines, Iowa;³⁵ Alexandria, Virginia;³⁶ and New Orleans, Louisiana.³⁷ Such figures and studies have encouraged the popular media to report that the shortage of rental housing available to families with children "has grown more and more intolerable."³⁸ Others feel that the situation has finally developed into a "nationwide housing crisis."³⁹

Fortunately, the extent of the problem concerning discrimination against children in rental housing may actually be far less severe than most researchers and commentators have suggested. The authors of the 1980 HUD study were careful to point out that, although approximately 75 percent of all rental units either exclude or restrict occupancy by children, such discriminatory practices vary dramatically according to the size of the particular rental unit.⁴⁰ Efficiencies and one-bedroom units are far more likely to be affected by policies excluding or restricting occupancy by children than units of two or more bedrooms.⁴¹ For example, although more than 35 percent of all efficiencies exclude children, less than 4 percent of all rental units containing three or more bedrooms prohibit children.⁴² In addition, families with only one child are permitted to live in nearly two-thirds of all rental units in the United

27. *Id.* (22% of rental units in the Northeast exclude children and an additional 48% impose restrictions on occupancy by children).

28. See *Why Johnny Can't Rent*, *supra* note 3, at 1829 n.3 (author refers to D. Ashford & P. Eston, *The Extent and Effects of Discrimination Against Children in Rental Housing: A Study of Five California Cities* 6 (Dec. 1979) (unpublished fair housing study conducted by the Fair Housing Childrens' Coalition, Inc., Santa Monica, California) (study found that 71% of all rental units in Los Angeles excluded children)).

29. See *id.* (study found that 70% of all rental units in San Jose excluded children).

30. See *id.* (study found that 65% of all rental units in San Diego excluded children).

31. See *id.* (study found that 53% of all rental units in Fresno excluded children).

32. See *id.* at 1834 n.31 (author refers to J. Greene, *An Evaluation of the Exclusion of Children From Apartments in Dallas, Texas* 9 (1978) (unpublished study found that approximately 52% of Dallas rental units excluded children and an additional 12% restrict the number and ages of children allowed in each unit)).

33. See H.R. REP. NO. 711, 100th Cong., 2d Sess., at 21 n.48 (1988) (refers to *Apartment Hunting Complex With Kids*, *Irving Daily News*, Oct. 25, 1985, at 1 (article presents data indicating that only 13 of the 40 apartment complexes built in the Dallas suburb of Irving between 1983 and 1985 accepted families with children)).

34. See *Travalio*, *supra* note 4, at 296 n.13 (author's survey of the classified sections of two Columbus newspapers in 1979 revealed that 30-40% of all rental housing in Columbus was available to adults only).

35. See H.R. REP. NO. 711, 100th Cong., 2d Sess., at 20 n.46 (1988) (refers to G. Burke, *A Report on Discrimination Against Children in Des Moines Rental Housing* 8 (Sept. 1985) (unpublished report prepared for the Des Moines Community Housing Resource Board concluding that children were excluded from 48% of all Des Moines rental units)).

36. See *Policies Frustrate*, *supra* note 2, at 35 (1985 survey found that only 9% of the rental units in Alexandria accepted children without restrictions).

37. See *Adults Only*, *TIME*, July 3, 1978, at 67 (estimated that only 25% of all rental units in New Orleans were available to families with children).

38. *Id.*

39. See 134 CONG. REC. H4612 (daily ed. June 22, 1988) (statement by Representative Miller).

40. See R. MARANS & M. COLTEN, *supra* note 14, at 27, 71.

41. *Id.* at 71.

42. *Id.* at 27.

States.⁴³ Consequently, although discrimination against families with children clearly exists to a considerable degree throughout the country, many of the studies and figures that appear to depict an incredibly widespread inability of such families to obtain rental housing should probably be interpreted with the notion that "many units which are off limits to families with children are objectively unsuitable or too small" to begin with.⁴⁴

C. *Effect of Discriminatory Rental Practices on Familial Homelessness*

Discrimination against families with children in rental housing is commonly perceived as one of the primary causes of the growing incidence of familial homelessness in America. Such discrimination generates a series of problems which ultimately lead families from virtually every segment of the American population to homeless shelters.⁴⁵ Probably the most immediate problem confronting families faced with discriminatory rental practices is a significantly increased amount of time required to search for housing where children are welcome.⁴⁶ For example, nearly 23 percent of those responding to a 1980 HUD survey of such discriminatory rental practices claimed to have spent twenty-seven or more weeks searching for housing.⁴⁷ Those that eventually find housing where children are welcome are often forced either to accept substandard, often overcrowded housing,⁴⁸ to live apart from their families,⁴⁹ to pay more than one-third of their income for larger rental units with no exclusionary policies,⁵⁰ or to purchase a home of their own before they can realistically afford one.⁵¹ Often, even after such families find alternative housing, they are still faced with the problems of having to travel a long distance to work, not being able to send their children to a preferred school, and coping with their children's emotional and psychological problems arising from being "shuffled around" from place to place.⁵²

Unfortunately, many families are simply never able to find housing. Although many of these families resort to living with relatives or friends during this seemingly endless search for a home of their own, an alarming proportion end up living in cars, vans, abandoned buildings, or tents.⁵³ The U.S. Conference of Mayors recently estimated that families with children now constitute more than 30 percent of the

43. Families with two children are permitted to live in 55% of all rental units and families with three or more children are permitted to select from approximately 41% of all rental units. *Id.* at 69.

44. *Id.* at 70.

45. See J. GREENE & G. BLAKE, *supra* note 13, at 32.

46. See R. MARANS & M. COLTEN, *supra* note 14, at 1.

47. J. GREENE & G. BLAKE, *supra* note 13, at 16. The average search time for families having difficulty finding alternative housing is approximately 9-10 weeks. *Id.* at 14.

48. *Id.* at 19-21.

49. *Id.* at 22.

50. *Id.* at 3.

51. See generally Travaglio, *supra* note 4, at 338, nn.278-79.

52. See J. GREENE & G. BLAKE, *supra* note 13, at 3; T. HARDY, *JUDE THE OBSCURE* 325, 327-32 (1983 ed.) (describes situation where a child who is upset over his parents' inability to find housing, kills himself and his siblings, leaving a note stating: "Done because we are too menny [sic].").

53. J. GREENE & G. BLAKE, *supra* note 13, at 33. When families are unable to obtain rental housing, 63% resort to living with relatives or friends and 33% end up living in cars, vans, abandoned buildings, or tents. *Id.*

homeless population nationwide, with some American cities reporting figures closer to 50 percent.⁵⁴ This segment of the homeless population is also the largest and fastest growing segment.⁵⁵ Congressman Miller of California recently commented on the tragic consequences associated with the rapid expansion of this segment of the homeless population:

In our hearings in the Select Committee on Children, Youth and Family, we have confronted this issue [of discrimination against families with children in rental housing] time and again. One thousand children last year were placed in foster care at an expense of anywhere from \$500 to \$1000 a month in the State of New Jersey simply because their parents did not have housing. In Los Angeles County, we are told there by judges that more and more children are being placed in foster care because their parents do not have housing.⁵⁶

As the plight of these homeless and inadequately housed families gains recognition, the continued existence of discrimination against families with children in rental housing has become an increasing source of national embarrassment, sometimes characterized as "immoral," "unethical," "unacceptable," or simply "un-American."⁵⁷

III. SUCCESS OF TRADITIONAL ATTEMPTS TO ELIMINATE FAMILIAL DISCRIMINATION

There was less than an overwhelming rush by state and local governments to eliminate familial discrimination in rental housing prior to 1988. Although commentators have suggested that action by state and local legislative bodies is probably the most desirable and effective method for resolving this discrimination problem,⁵⁸ the majority of states and localities simply refused to enact such legislation. By 1988, only fourteen states (Arizona, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New York, Rhode Island, Vermont, and Virginia)⁵⁹ and a limited number of local governments⁶⁰ had proscribed to any extent discrimination against families with children in rental housing based on familial status.

Unfortunately, even in those jurisdictions which statutorily prohibited rental discrimination based on familial status, numerous exemptions and loopholes usually existed which severely limited the class of people protected by the statute or ordinance. For example, in Arizona, Rhode Island, and Virginia, all "adult-only" com-

54. See 134 CONG. REC. S10557 (daily ed. Aug. 2, 1988) (statistics quoted by Senator Cranston).

55. 134 CONG. REC. H4612 (daily ed. June 22, 1988) (statement by Representative Synar).

56. 134 CONG. REC. H4685 (daily ed. June 23, 1988) (statement by Representative Miller).

57. See *id.* at H4683 (statement by Representative Scheuer).

58. See, e.g., Travaglio, *supra* note 4, at 338; *Why Johnny Can't Rent*, *supra* note 3, at 1840.

59. See ARIZ. REV. STAT. ANN. § 33-1317 (Supp. 1987); Unruh Civil Rights Act, CAL. CIV. CODE § 51.2 (West Supp. 1989); CONN. GEN. STAT. ANN. § 46a-64a (West 1986); DEL. CODE ANN. tit. 25, § 6503 (1975); Illinois Human Rights Act, ILL. ANN. STAT. ch. 68, para. 3-104 (Smith-Hurd 1989); ME. REV. STAT. ANN. tit. 14 § 6027 (Supp. 1988); MASS. GEN. LAWS ch. 151B § 4(11) (Law. Co-op. 1989); MICH. COMP. LAWS ANN. § 37.2502 (West 1985); Minnesota Human Rights Act, MINN. STAT. ANN. § 363.03, subd. 2(1) (West Supp. 1989); N.J. STAT. ANN. § 2A:42-101 (West 1987); N.Y. REAL PROP. LAW §§ 236-237 (McKinney 1989); Rhode Island Fair Housing Practices Law, R.I. GEN. LAWS § 34-37-4, subd. E (Supp. 1988); VT. STAT. ANN. tit. 9, § 4503 (Supp. 1989); Virginia Fair Housing Law, VA. CODE ANN. § 36-88 (1984 & Supp. 1989).

60. See *Why Johnny Can't Rent*, *supra* note 3, at 1829-30 n.4.

munities were exempt from the jurisdictions' antidiscrimination provisions.⁶¹ In Michigan, the state statute provided exemptions for "retirement" communities with abnormally low entrance ages.⁶² As a further example, Illinois' and New Jersey's statutes only protected children under fourteen years of age from discriminatory rental practices.⁶³

Even if an aggrieved party was fortunate enough to fall within the class of individuals protected under a particular jurisdiction's antidiscrimination laws, incredibly weak enforcement provisions rendered most of the state and local laws effectively worthless.⁶⁴ Many jurisdictions made discrimination based on familial status a criminal act, typically punishable by only a small monetary fine.⁶⁵ Even in jurisdictions with tougher enforcement provisions and prospects of possible recovery of damages for aggrieved parties,⁶⁶ victims of such discrimination often faced substantial obstacles to the enforcement of their rights. Many local prosecutors viewed familial discrimination in rental housing as a "second-class" type of discrimination.⁶⁷ Therefore, a great deal of persistence was often needed to "get the prosecutor's attention and prod him into action."⁶⁸ Yet, because the aggrieved party often lacked a substantial pecuniary interest in the outcome of the prosecution and most likely would not be helped in the search for rental housing regardless of the outcome, such persistence was rarely forthcoming.⁶⁹

An additional problem confronting aggrieved parties was that many of those charged with enforcing a particular jurisdiction's antidiscrimination laws were often unaware that such provisions existed. For example, a 1975 Illinois survey revealed that 49 percent of the district attorneys—those individuals charged with enforcing Illinois' prohibition on discrimination against families with children in rental hous-

61. ARIZ. REV. STAT. ANN. § 33-1317, subd. B (Supp. 1988) ("No person shall . . . rent or lease his property to persons who have a child or children living with them when his property lies within a subdivision which subdivision is presently designed, advertised and used as an exclusive adult subdivision."); Rhode Island Fair Housing Practices Law, R.I. GEN. LAWS § 34-37-4, subd. E(5)(e) (Supp. 1988) ("Nothing contained . . . herein, shall be construed to affect . . . Adults-only housing complexes."); Virginia Fair Housing Law, VA. CODE ANN. § 36-88 (1984 & Supp. 1988) ("Notwithstanding the foregoing provisions, it shall not be an unlawful discriminatory housing practice to operate an all-adult or all-elderly housing community."), amended by VA. CODE ANN. § 36-88 (Supp. 1989).

62. MICH. COMP. LAWS ANN. § 37.2503, subd. 1(c) (West 1985) (age antidiscrimination provisions shall not apply to "accommodations otherwise intended, advertised, designed or operated for persons 50 years of age or older.").

63. Illinois Human Rights Act, ILL. ANN. STAT. ch. 68, para. 3-104, subd. A (Smith-Hurd 1989); N.J. STAT. ANN. § 2A:42-101 (West 1987).

64. See *Why Johnny Can't Rent*, *supra* note 3, at 1843.

65. See, e.g., CONN. GEN. STAT. ANN. § 46a-64a, subd. C (West 1986) (violation of antidiscrimination provisions is a crime punishable by a fine of between \$25 and \$100, a maximum prison sentence of 30 days, or both); N.Y. REAL PROP. LAW § 236, subd. A (McKinney 1989) (violation of antidiscrimination provisions is a misdemeanor punishable by a fine of between \$50 and \$100 for each offense).

66. See, e.g., DEL. CODE ANN. tit. 25, § 6503, subd. C (1975) (aggrieved party may recover damages including "reasonable expenditures necessary to obtain adequate substitute housing"); Minnesota Human Rights Act, MINN. STAT. ANN. §§ 363.06-.14 (West 1966 & Supp. 1989) (Minnesota Act provides for administrative enforcement and a wide range of available remedies including compensatory and punitive damages for violations of antidiscrimination provisions).

67. *Why Johnny Can't Rent*, *supra* note 3, at 1843.

68. *Id.*

69. *Id.*

ing—were ignorant of the existence of this particular provision of the state's antidiscrimination laws.⁷⁰

The dismal impact of many state and local provisions prohibiting discriminatory practices geared toward excluding families with children from rental property is well documented. Even after passage in 1984 of provisions explicitly prohibiting such discrimination in California, almost 40 percent of landlords in eleven major California cities and 56 percent of all California's mobile home parks continued to exclude or restrict occupancy by children.⁷¹ Following state-wide hearings five years after the passage of Connecticut's antidiscriminatory provisions in 1981, the Connecticut Commission on Human Rights and Opportunities was forced to conclude that families with children were still being "overtly and illegally discriminated against."⁷² A review of data from New York in 1981 revealed a total absence of any reported appellate cases concerning the state's sixty-year-old prohibition on familial discrimination in rental housing.⁷³ In addition, data from New Jersey revealed a continuing discrimination problem despite passage of similar antidiscrimination provisions by the state in 1898.⁷⁴

In summary, action by state and local legislative bodies to prohibit discrimination against families with children in rental housing was inadequate prior to 1988. Only fourteen states and a handful of local jurisdictions had enacted any kind of prohibition against such discriminatory rental practices. Of those jurisdictions providing some form of protection, antidiscrimination provisions tended to be plagued by numerous exemptions, loopholes, and weak enforcement provisions which rendered most of the prohibitions effectively worthless. Consequently, discriminatory rental practices geared toward excluding or restricting occupancy by children continued relatively unhindered throughout the 1980s.

IV. SUCCESS OF ACT IN REDUCING FAMILIAL DISCRIMINATION IN RENTAL HOUSING

A. *Act's Improvements Over State and Local Fair Housing Laws*

The Fair Housing Amendments Act of 1988 (the "Act") improves upon traditional attempts to eliminate the problem of discrimination against families with children in rental housing in at least two significant ways. First, in comparison with the state and local antidiscrimination laws in effect prior to 1988, the Act greatly expands the class of individuals now protected from such discriminatory rental practices.

70. O'Brien & Fitzgerald, *Apartment for Rent—Children Not Allowed: The Illinois Children in Housing Statute—Its Viability and a Proposal for its Comprehensive Amendment*, 25 DEPAUL L. REV. 64, 82–85 (1975).

71. See 134 CONG. REC. H4611 (daily ed. June 22, 1988) (statement by Representative Miller of California summarizing recent statistics from his home state).

72. See H.R. REP. NO. 711, 100th Cong., 2d Sess. 20 (1988) (House Report cites data from an unpublished report prepared by the Connecticut Commission on Human Rights and Opportunities in April 1986).

73. See *Why Johnny Can't Rent*, *supra* note 3, at 1844.

74. See H.R. REP. NO. 711, 100th Cong., 2d Sess. 20 (1988) (House Report summarizes recent unpublished data compiled by Middlesex County, New Jersey, Monmouth County Board of Social Services Housing Unit, and the New Jersey Tenants Organization regarding the continuing existence of discrimination against families with children in New Jersey's rental market).

Second, the Act eliminates many of the obstacles that have prevented victims of such discriminatory rental practices from enforcing their rights under state and local antidiscrimination laws. The remainder of this subpart considers in greater detail each of these immediate improvements upon state and local law.

1. *Expansion of the Protected Class*

One of the Act's most apparent improvements over state and local fair housing laws is its dramatic expansion of the number of people protected from discriminatory rental practices geared toward excluding or restricting occupancy by families with children. Clearly, the largest class of people to obtain new protection from such discrimination consists of families residing in the thirty-six states that lacked provisions prohibiting rental discrimination based upon familial status.⁷⁵ Under the Act, landlords across the country may no longer discriminate against prospective tenants because of the tenant's familial status. This "familial status" is defined under the Act as follows:

[O]ne or more individuals who have not attained the age of 18 years being domiciled with—
1) a parent or another person having legal custody of such individual or individuals; or
2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.⁷⁶

The term "familial status" encompasses pregnant persons and persons in the process of adopting a child⁷⁷ but does not encompass "marital status."⁷⁸

Many families residing in the fourteen states that prohibited discrimination against families with children in rental housing⁷⁹ also gain previously unobtainable protection. In contrast to the fairly limited contexts in which such rental discrimination was commonly prohibited in these states,⁸⁰ familial discrimination in rental housing is prohibited in a wide variety of contexts under the 1988 Act. No longer may any person refuse to rent or negotiate, include unfair lease terms, use discriminatory advertising, misrepresent the availability of rental housing, engage in "block-busting" activities,⁸¹ or discriminate in providing access to any service, organization,

75. The 36 states lacking provisions banning discrimination against families with children in rental housing prior to passage of the Act are Alabama, Alaska, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming. See *supra* note 59 for those 14 states with legislation.

76. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 5, 102 Stat. 1619, 1620 (1988) (to be codified at 42 U.S.C. § 3602(k)).

77. *Id.*

78. See H.R. REP. NO. 711, 100th Cong., 2d Sess., at 23 (1988).

79. See *supra* note 59.

80. See, e.g., ARIZ. REV. STAT. ANN. § 33-1317 (Supp. 1988) (statute only prohibits person from knowingly refusing to rent to families with children or advertising such restrictions); N.J. STAT. ANN. § 2A:42-101 (West 1987) (statute only prohibits person from refusing to rent or including unfair lease terms based on familial status).

81. Blockbusting consists of any effort "for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap." Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3286 (1989) (to be codified at 24 C.F.R. § 100.85).

or facility relating to the business of renting dwellings because of a person's familial status.⁸² In addition, no person or entity whose business includes engaging in residential real estate-related transactions may discriminate either in making dwellings available or in negotiating the terms or conditions of such a transaction.⁸³ Nor may any person coerce, intimidate, threaten, or interfere with an individual who has helped another person exercise that person's right to be free from discrimination based on familial status.⁸⁴ HUD has provided regulations and detailed commentary to help refine the scope of these discriminatory practices.⁸⁵ As a logical consequence, many families who have been discriminated against in rental housing by means which have been routinely allowed under state or local laws are finally given protection from such practices.

Many of the people previously excluded from antidiscrimination protection by numerous exemptions and loopholes in applicable state and local laws are also now protected under the Act. The Act exempts only two classes of people in addition to those exempt from such federal fair housing provisions under the old "single-family-home-owner,"⁸⁶ "Mrs. Murphy,"⁸⁷ and "religious organization/private club"⁸⁸ exemptions of the 1968 Fair Housing Act. Under the new Act, a person may only refuse to rent to a family with children if leasing the premises to the family would violate "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling"⁸⁹ or if the rental unit in question qualifies as "housing for older persons."⁹⁰ Only the following three types of rental housing now qualify as "housing for older persons": 1) housing provided under a state or federal program that the Secretary of HUD (the Secretary) considers to be specifically designed and operated to assist elderly persons; 2) housing intended for and solely occupied by persons sixty-two years of age or older; and 3) housing intended for and operated for occupancy by at least one person fifty-five years of age or older.⁹¹ In order to insure that only legitimate rental facilities for older persons will be entitled to exclude families with children in the future, the Secretary has provided detailed guidelines and regulations which must be complied with before a rental unit will qualify as "housing for older persons" within the meaning of this exemption.⁹²

82. These are the prohibited discriminatory practices specified in the Fair Housing Act of 1968, 42 U.S.C. §§ 3601-19 (1982). The 1988 Act merely adds "familial status" as a basis upon which such practices may not be conducted. See Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 6, 102 Stat. 1619, 1622 (1988) (to be codified at 42 U.S.C. § 3602(k)).

83. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 6, 102 Stat. 1619, 1622 (1988) (to be codified at 42 U.S.C. § 3205).

84. See Fair Housing Act of 1968, 42 U.S.C. § 3617 (1982) (provision retained by 1988 Act).

85. See Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 44996-99, 45008, 45024-32 (1988), 3283-3317 (1989) (to be codified at 24 C.F.R. §§ 100.1-400).

86. See Fair Housing Act of 1968, 42 U.S.C. § 3603(b)(1) (1982).

87. See *id.* at § 3603(b)(2).

88. See *id.* at § 3607.

89. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 6, 102 Stat. 1619, 1623 (1988) (to be codified at 42 U.S.C. § 3607) (amending § 807 of the Fair Housing Act of 1968).

90. *Id.*

91. *Id.*

92. See Implementation of the Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3253 (1989) (to be codified at 24 C.F.R. § 100.300).

Any state or local exemptions or loopholes not provided for in the 1968 or 1988 Acts are invalid.⁹³ For example, landlords in Illinois and New Jersey may no longer deny rental housing to families simply because the family's child is over fourteen years of age.⁹⁴ Similarly, landlords may no longer exclude or restrict children from rental housing merely because the units are classified as being for "adults-only," the "elderly," or "swinging-singles" unless the units qualify as "housing for older persons" within the meaning of the 1988 Act.⁹⁵

In summary, the 1988 Act immediately increases the class of people protected from discrimination against families with children in rental housing by extending protection against such discrimination to families in all fifty states, expanding the scope of discriminatory activities commonly prohibited under state and local laws, and extending protection from discrimination against families with children in rental housing to many people who routinely have been denied protection through loopholes or broad exemptions in relevant state and local antidiscrimination laws.

2. *Elimination of Enforcement Obstacles*

The Act also provides the means to overcome several of the primary obstacles which have traditionally prohibited victims of familial discrimination from effectively asserting their rights. One of the most significant obstacles to the effective enforcement of fair housing rights has been the pervasive lack of incentive for many victims of such discrimination to seek relief. Now, however, instead of the bleak enforcement prospects and trivial remedies available under state and local fair housing laws,⁹⁶ the Act provides for "appropriate temporary or preliminary" injunctive relief,⁹⁷ actual damages,⁹⁸ attorneys fees and costs,⁹⁹ and punitive damages ranging up to 100,000 dollars in certain situations¹⁰⁰ to successful complainants.¹⁰¹ No longer must a victim of discriminatory rental practices based on familial status be content with the knowledge that the convicted perpetrator of such discrimination will be forced to pay only

93. See Fair Housing Act of 1968, 42 U.S.C. § 3615 (1982) ("Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.").

94. See *supra* note 63 and accompanying text.

95. See *supra* note 93.

96. See *supra* notes 64-66 and accompanying text.

97. See Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 8, 102 Stat. 1619, 1626 (1988) (to be codified at 42 U.S.C. § 3610(e)) ("If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint . . . the Attorney General shall promptly commence and maintain such an action.").

98. See *id.* at 1630 (to be codified at 42 U.S.C. § 3612).

99. See *id.* at 1633 (to be codified at 42 U.S.C. § 3613).

100. See *id.* at 1635 (to be codified at 42 U.S.C. § 3614) (a court may assess a civil penalty not exceeding \$100,000 against any respondent who has been found to be responsible for a second violation of federal fair housing laws).

101. "Complainant" is defined as any person (including the Secretary of HUD) who files a complaint under the 1988 Act. *Id.* at 1620 (to be codified at 42 U.S.C. § 3602).

a twenty-five dollar fine.¹⁰² The prospect of such a wide and more realistic array of damages will certainly provide adequate incentive for many victims of discriminatory rental practices to pursue relief more vigorously.¹⁰³ Yet, even in those cases where an individual family decides not to pursue the matter, the Attorney General may still commence a civil action on the family's behalf if the discriminatory rental practice involved constitutes a common "pattern or practice" by a landlord or raises an issue of general public importance.¹⁰⁴ Even in such situations, the aggrieved family may later intervene and obtain its appropriate share of damages.¹⁰⁵

The problems previously associated with having to persuade often-reluctant and uninformed prosecutors to handle cases of familial discrimination¹⁰⁶ are also confronted. Under the Act, an aggrieved person¹⁰⁷ only needs to file a complaint with the Secretary to initiate a thorough investigation into the merits of the particular complaint.¹⁰⁸ Assuming that no immediate injunctive relief is necessary,¹⁰⁹ the Secretary has 100 days to complete the investigation and to encourage conciliation among the parties.¹¹⁰ If the complaint does not involve matters of state or local zoning or land use laws¹¹¹ and the Secretary has reasonable cause to believe that a discrim-

102. This was the situation that victims of discrimination were confronted with under Connecticut law. *See supra* note 65 and accompanying text.

103. HUD has adopted a series of rules and regulations concerning fair housing advertisements which are aimed at informing the public of this right to be free from discrimination in rental housing based on familial status. *See Implementation of Fair Housing Amendments Act of 1988*, 54 Fed. Reg. 3285 (1989) (to be codified at 24 C.F.R. § 100.75). Recent reports indicate that the public is wasting no time asserting its new and valuable rights. In reference to an interview with Kerry Alan Scanlon, attorney with the NAACP Legal Defense and Education Fund, Inc., concerning the impact of the 1988 Act, the *National Law Journal* noted that:

With the possibility of high awards now present, Mr. Scanlon says the door is open for results such as the \$325,000 settlement reached Sept. 8 in a D.C. federal court against a Potomac, Md., developer and its advertising agency. . . .

So far, the Department of Justice—on case referrals from HUD and other public and private housing groups—has filed 21 lawsuits across the country on behalf of discrimination victims.

[I]n six cases, the Justice Department obtained court orders blocking the sale or rental of homes pending resolution of the discrimination complaint—another powerful weapon in the 1988 amendments.

Lavelle, *supra* note 11, at 3–4.

104. *See Fair Housing Amendments Act of 1988*, Pub. L. No. 100-430, § 8, 102 Stat. 1619, 1634 (1988) (to be codified at 42 U.S.C. § 3614(a)). ("Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.").

105. *See id.* at 1635 (to be codified at 42 U.S.C. § 3614).

106. *See supra* notes 67–70 and accompanying text.

107. The 1988 Act defines an "aggrieved person" as any person who "1) claims to have been injured by a discriminatory housing practice; or 2) believes that such person will be injured by a discriminatory housing practice that is about to occur." *Fair Housing Amendments Act of 1988*, Pub. L. No. 100-430, § 5, 102 Stat. 1619, 1620 (1988) (to be codified at 42 U.S.C. § 3602).

108. *See Fair Housing Amendments Act of 1988*, Pub. L. No. 100-430, § 8, 102 Stat. 1619, 1625 (1988) (to be codified at 42 U.S.C. § 3610).

109. *See supra* note 97.

110. *See Fair Housing Amendments Act of 1988*, Pub. L. No. 100-430, § 8, 102 Stat. 1619, 1625 (1988) (to be codified at 42 U.S.C. § 3610).

111. *See id.* at 1628 ("If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action . . . instead of issuing a charge.").

inatory rental practice has occurred or is about to occur,¹¹² the Secretary issues a charge against the defendant(s).¹¹³ Once the Secretary issues the charge, it is within the *complainant's* discretion—not that of the local prosecutor—to decide whether to proceed with the matter either by a civil action or by a hearing conducted by an Administrative Law Judge.¹¹⁴

Most importantly, the often-prohibitive pecuniary burden placed on poorer families during an action to enforce their right to be free from discriminatory rental practices is now largely eliminated. Throughout the administrative enforcement stages of any fair housing complaint, the costs of such procedures are absorbed by HUD.¹¹⁵ If an aggrieved party elects to proceed in a private civil action during any appropriate stage in the proceedings, the state or federal court hearing the case may appoint an attorney for the aggrieved party.¹¹⁶ Likewise, if the court finds that a particular party to the action is financially unable to bear the costs of such an action, the court may authorize the commencement or continuation of the action without the payment of fees, costs, or security by the financially burdened party.¹¹⁷

In summary, the Act immediately eliminates several traditional obstacles to the effective enforcement of a person's right to be free from rental discrimination based on familial status by finally providing an incentive to pursue relief for such discrimination, providing an avenue for aggrieved parties to avoid the actions of state and local prosecutors in arbitrarily dismissing such discrimination claims, and by providing an avenue for poorer families to avoid the often prohibitive costs associated with maintaining actions for relief from such discrimination.

B. *Act's Effect on Future State and Local Fair Housing Laws*

The Act will most likely have a significant influence on the substance of future state and local fair housing laws. HUD can refer complaints alleging discriminatory rental practices only to properly certified state and local fair housing agencies.¹¹⁸ Before HUD will certify an agency to handle claims alleging discrimination based on familial status, the Secretary must be satisfied that two conditions are met. First, the state or local fair housing law administered by the agency must, on its face, provide that the substantive rights protected by the agency, the procedures followed by the agency, the remedies available to the agency, and the availability of judicial review of such agency actions are "substantially equivalent" to those created by and under

112. *See id.*

113. *See id.* ("Such charge- (i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; (ii) shall be based on the final investigative report; and (iii) need not be limited to the facts or grounds alleged in the complaint").

114. *See id.* at 1629 (to be codified at 42 U.S.C. § 3612) ("When a charge is filed . . . , a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action . . . in lieu of a hearing [conducted by an Administrative Law Judge]").

115. *See id.* at 1625-33.

116. *See id.* at 1633 (to be codified at 42 U.S.C. § 3613).

117. *See id.*

118. *See id.* at 1627 (to be codified at 42 U.S.C. § 3610(f)).

the Act.¹¹⁹ Second, the current practice and past performance of the agency must demonstrate that, in operation, the current state or local fair housing law *in fact* provides rights and remedies which are “substantially equivalent” to those provided under the Act.¹²⁰ HUD predicted that such stringent certification requirements would

encourage States and localities to amend their laws to match the Federal enforcement mechanisms [of the Act], or suffer the eventual loss of recognition as substantially equivalent State or local agencies and possible loss of function if citizens of the jurisdiction do not choose to file complaints with State or local officials. Additionally, jurisdictions losing equivalency status will lose eligibility for grant funds available to co-enforcers of fair housing laws.¹²¹

By January 1990, at least eleven states had taken some affirmative action toward revising their fair housing laws to provide protection against familial discrimination.¹²² HUD has already certified the Texas Commission on Human Rights to handle complaints alleging such discrimination.¹²³ Eventually all state and local governments that want to remain eligible for grant funds will revise their current antidiscrimination laws in a manner that will mirror the Act’s prohibition of discriminatory rental practices based on familial status.

V. CONCLUSION

The antidiscriminatory provisions of Congress’ Fair Housing Amendments Act of 1988 appear to be the first significant step toward reducing discriminatory rental practices based on familial status.¹²⁴ Although a limited class of people may still openly discriminate under the Act,¹²⁵ a nationwide prohibition on such practices, coupled with realistic enforcement mechanisms, will undoubtedly encourage the vast majority of landlords to abstain from implementing policies aimed at excluding or restricting occupancy by children.¹²⁶ State and local fair housing agencies are already encouraging revisions of state and local fair housing laws to mirror the federal antidiscrimination provisions.¹²⁷ As a result, federal, state, and local fair housing agencies will all be actively involved in eliminating such discrimination in the future. It thus appears that Congress finally has provided a mechanism by which discrimi-

119. Implementation of Fair Housing Amendments Act of 1988, 54 Fed. Reg. 3311-12 (1989) (to be codified at 24 C.F.R. § 115.2).

120. *Id.*

121. Implementation of Fair Housing Amendments Act of 1988, 53 Fed. Reg. 45020 (1988).

122. See, e.g., Minnesota Human Rights Act, MINN. STAT. ANN. § 3603.03, subd. 2 (West Supp. 1989); Montana Human Rights Act, MONT. CODE ANN. § 49-2-305 (1989); Virginia Fair Housing Law, VA. CODE ANN. § 36-88 (Supp. 1989); West Virginia Human Rights Commission, W. VA. CODE § 5-11-9 (Supp. 1989); Comm. Substitute for H.R. 940, 1989 FLA. LAWS 321; S. 56, 1989 IOWA ADV. LEGIS. SERV. 56; S. 457, 1989 ME. ADV. LEGIS. SERV. 245; H.R. 865, 1989 N.C. ADV. LEGIS. SERV. 510; H.R. 334, 1989 N.C. ADV. LEGIS. SERV. 507; H.R. 653, 1989 N.C. ADV. LEGIS. SERV. 355; H.R. 197, 1989 N.C. ADV. LEGIS. SERV. 185; H.R. 3388, 1989 OR. LAWS 686; S. 75, 1989 TEX. GEN. LAWS 1081; S. 14, 1989 UTAH ADV. LEGIS. SERV. 14. See also OHIO ADMIN. CODE § 1301:5-5-01(A) (1989).

123. See Office of Public Affairs, U.S. Dep’t of Housing and Urban Dev., News Release No. 90-01 (Jan. 9, 1990).

124. See *supra* notes 75-117 and accompanying text.

125. See *supra* notes 86-92 and accompanying text.

126. Implementation of the Fair Housing Amendments Act of 1988, 53 Fed. Reg. 45020 (1988).

127. See *supra* notes 118-21 and accompanying text.

nation against families with children may be effectively eliminated within the American rental housing market.

Nevertheless, it should be understood that, even if the provisions of the Act could effectively eliminate *all* future discrimination against families with children, such an accomplishment would serve only to eliminate *one* of the various economic, political, and social factors contributing to the larger homelessness problem affecting our nation's families. Governmental maximum occupancy restrictions (specifically permitted under the Act), exclusionary zoning regulations (to the extent allowable after passage of the Act), racial prejudice (generally ignored by the Act), and basic economic realities (also generally ignored by the Act) would still exclude a considerable number of families with children from adequate rental housing. For example, recent income stagnation and growing household debt of many families combined with skyrocketing rents in many areas of the country will continue to prevent a significant number of families from obtaining *any* rental housing on purely economic bases.¹²⁸ In addition, even otherwise affordable efficiency and one-bedroom units will remain either objectively unsuitable¹²⁹ or legally off-limits to families with several children under "reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."¹³⁰ These families, comprising nearly 60 percent of all rental households with children,¹³¹ will continue to be forced into paying prohibitively higher rents for the larger rental units which were subject to only negligible antidiscriminatory policies before passage of the Act.¹³² In light of such basic observations, it is clear that factors other than discriminatory rental practices will continue to exclude a considerable number of families with children from the American rental market. As a result, Congress may eventually win the battle against familial discrimination in rental housing, yet end up only a small step closer to victory in the larger war against widespread familial homelessness.

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128. See 134 CONG. REC. H4611 (daily ed. June 22, 1988) (statement by Representative Miller summarizing current trends in the American rental market).

129. See *supra* notes 40-44 and accompanying text.

130. See *supra* note 89 and accompanying text.

131. R. MARANS & M. COLTEN, *supra* note 14, at 12 (37.5% of all families with children have two children and 20.6% of all families have three or more children).

132. See *supra* notes 40-44 and accompanying text.